

American Jurists and Attorneys Opposing Injustice at Nuremberg

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The Nuremberg and later trials were organized primarily for political purposes rather than to dispense impartial justice. This article will discuss the efforts of three American attorneys to expose and correct the injustice of these trials.

Charles F. Wennerstrum



Iowa Supreme Court Justice Charles F. Wennerstrum, who served as the presiding judge in the Nuremberg trial of German generals, resigned his appointment in disgust at the proceedings. In an interview with the *Chicago Tribune*, he criticized the one-sided handling of evidence in the trials. Wennerstrum said that selection of the evidence in the trials was made by the prosecution from the large tonnage of captured German records. The defense had access only to those documents which the prosecution considered material to the case. [\[1\]](#)

Justice Wennerstrum also said that the prosecution and staff at Nuremberg were more interested in revenge than justice. He stated: “The prosecution has failed to maintain objectivity aloof from vindictiveness, aloof from personal ambitions for convictions...The trials were to have convinced the Germans of the guilt of their leaders. They convinced the Germans merely that their leaders lost the war to tough conquerors.” [\[2\]](#)

Wennerstrum stated: “The entire atmosphere is unwholesome...Lawyers, clerks, interpreters, and researchers were employed who became Americans only in recent years, whose backgrounds were embedded in Europe’s hatreds and prejudices...If I had known seven months ago what I know today, I would never have come here...The high ideals announced as the motives for creating these tribunals

have not been evident.” The lack of appeal in the Nuremberg cases left Wennerstrum “with a feeling that justice has been denied.”[\[3\]](#)

Edward L. Van Roden

Pennsylvania judge Edward L. Van Roden and Texas Supreme Court Justice Gordon Simpson were members of a three-man commission to investigate the torture and abuse of German defendants in American-run war-crimes trials. Their Simpson Commission report examined the 139 death sentences against Germans which at that time had not been carried out. The cases against the 139 doomed men fell into three groups: Germans accused of involvement in crimes at the Dachau Concentration Camps, in the killing of the crews of downed American warplanes, or in the Malmédy incident.

Van Roden was quoted in an article in *The Progressive* magazine that he was shocked at the methods used to obtain confessions from German defendants:

The statements which were admitted as evidence were obtained from men who had first been kept in solitary confinement for three, four, and five months. They were confined between four walls, with no windows, and no opportunity of exercise. Two meals a day were shoved in to them through a slot in the door. They were not allowed to talk to anyone. They had no communication with their families or any minister or priest during that time.

This solitary confinement proved sufficient in itself in some cases to persuade the Germans to sign prepared statements. These statements not only involved the signer, but often would involve other defendants.

Our investigators would put a black hood over the accused’s head and then punch him in the face with rubber hose. Many of the German defendants had teeth knocked out. Some had their jaws broken.

All but two of the Germans, in the 139 cases we investigated, had been kicked in the testicles beyond repair. This was Standard Operating Procedure with American investigators.[\[4\]](#)

Van Roden stated that German prisoners who still refused to sign false statements faced more-severe improper treatment:

Sometimes a prisoner who refused to sign was led into a dimly lit room, where a group of civilian investigators, wearing U.S. Army uniforms, were seated around a black table with a crucifix in the center and two candles burning, one on each side. “You will now have your American trial,” the defendant was told.

The sham court passed a sentence of death. Then the accused was told, “You will hang in a few days, as soon as the general approves this sentence: but in the meantime sign this confession and we can get you acquitted.” Some still wouldn’t sign.

We were shocked by the crucifix being used so mockingly.[\[5\]](#)

Van Roden concluded: “Unless these crimes committed by Americans are exposed by us at home, the prestige of America and American justice will suffer permanent and irreparable damage.”[\[6\]](#)

Willis N. Everett, Jr.

American attorney Willis N. Everett, Jr. was assigned to defend the 74 German defendants accused in the Malmédy incident. The trial took place from May 16 to July 16, 1946 before a military tribunal of senior American officers operating under rules established by the Nuremberg International Military Tribunal.[\[7\]](#)

Everett and his defense staff of lawyers, interpreters and stenographers divided into several teams to interview the defendants. Everett wrote to his family of the experience:

Several defendants today said they thought they had had a trial...a Col. sat on the Court and his defense counsel rushed the proceedings through and he was to be hanged the next day so he might as well write up a confession and clear some of his fellows seeing he would be hanged...another kind of court had black curtains...The Lt. Col. sat as judge at a black-draped table which had a white cross on it and the only light was two candles on either end. He was tried and witnesses brought in and he was sentenced to death, but he would have to write down in his own handwriting a complete confession. Then the beatings and hang-man's rope, black hood, eye gougers which they claimed would be used on them unless they confessed. Not a one yet wrote out his statement but each stated that the prosecution dictated their statements and they said it made no difference anyway as they would die the next day. So on and on it goes with each one of the defendants. The story of each must have some truth because they have each been in solitary confinement.[\[8\]](#)

Jochen Peiper, the lead defendant in the Malmédy trial, made an extremely favorable impression on Everett. Peiper testified at the trial of the beating he received while being interrogated:

On the last day of my stay in Schwäbisch Hall I was called for interrogation and received, as usual, a black hood over my head. And I had to wait down there in the hall of the prison for about five minutes, since the American sergeant who came for me went to get some other comrades of mine from their cell. During this occasion when I was standing there quietly waiting, I was struck in the face by a person unknown to me, and several times in my sexual parts with a stick.[\[9\]](#)

All of the defendants at the Malmédy trial were found guilty, with Peiper and 42 other defendants sentenced to death by hanging. Peiper wrote a letter to Willis Everett after the trial expressing his gratitude for Everett's work as his defense attorney:

Before our steps separate, I want to thank you especially for all help you gave us as a human being, as a soldier and chief counsel of the defense during the past eight weeks. In a time of deepest human disappointment, you and [Lt. Col. Harold] McCown have returned to me much faith I already had lost. This will remain one of the best remembrances and was worth the whole procedure of the Malmédy case.[\[10\]](#)

Willis Everett on a Mission

Willis Everett was convinced that the Malmédy trial had been a justicial travesty. Approximately 100 of Everett's friends and some additional American military officers advised Everett to forget about the Malmédy case and live in the present. Everett's outrage, however, set him on a mission to obtain justice for the Malmédy defendants.[\[11\]](#)

Everett and another defense-team member prepared a 228-page critique of the investigation and trial, stating that the Malmédy convictions had been secured primarily on the basis of "illegal and

fraudulently procured confessions.” The petition also argued that the trial was a travesty of justice to German soldiers since the Allies were also guilty of the same violations of international law. Everett sent this document to Lt. Col. Clio Straight’s office for inclusion in the internal review process that was mandatory before verdicts and sentences became final.[\[12\]](#)

Everett began to muster forces for a concerted campaign to reverse the Malmédy verdict. Everett read Charles Wennerstrum’s article in the *Chicago Tribune*, and wrote to Wennerstrum of his struggle to get a rehearing in the Malmédy case:

Consistently I have told the Commanding General EUCOM that I was going to the U.S. Supreme Court and the papers if they do not send the case back for retrial. Frankly I know of no way to get to the Supreme Court but have done a lot of “bluffing” along this line to force them to send the case back for retrial... We both think alike about war crimes trials except that I am a Rebel on the subject and you were gentle in your manner.[\[13\]](#)

Wennerstrum served as a source of sympathetic and judicious counsel for Everett in the months to come, and provided Everett with introductions to potentially supportive Midwestern politicians. Everett continued with a multipronged campaign of judicial appeal, publicity and congressional pressure to get a retrial of the Malmédy case.[\[14\]](#)

The U.S. Supreme Court refused a petition from Everett to rehear the Malmédy case. Everett then prepared an appeal to the International Court of Justice in The Hague (ICJ). Everett knew there was little chance the ICJ would accept his case since only states could be parties to cases before the ICJ. Everett discussed with Wennerstrum the innovative notion of arguing that since there was no German national government after Germany’s unconditional surrender, there was no one but Everett to make the appeal. Both lawyers agreed it was worth a try.

Wennerstrum also advised that they add the even more adventurous argument that, while the court statute might prohibit individuals from filing cases, “international common law” might be alleged to require it.[\[15\]](#)

The ICJ predictably refused to hear Everett’s appeal of the Malmédy case. Everett also received word on or about December 29, 1948, that some of the death sentences in the Malmédy case had been approved by Gen. Lucius Clay. Everett despaired that the U.S. Army was determined to protect itself at all costs, even at the price of hanging innocent men.[\[16\]](#)

Justice Prevails, Late

The Simpson Commission report recommended that all of the death sentences not yet carried out in the Malmédy case be commuted to life imprisonment. The report affirmed Everett’s misgivings about the mock trials and stated that the pretrial investigation had not been properly conducted. The turmoil resulting from the commission report along with the aforementioned article by Edward L. Van Roden caused the U.S. Senate to investigate the Malmédy trial.[\[17\]](#)

The investigation of the Malmédy trial conducted by the Senate Committee on Armed Services determined that there was “little or no evidence” to support Van Roden’s claim that the Malmédy defendants had been physically abused.[\[18\]](#) Judge Edward L. Van Roden testified at this hearing that he never said that 137 of 139 German prisoners had their testicles damaged beyond repair as reported

in *The Progressive* magazine.^[19] However, the committee determined that improper pretrial procedures such as mock trials had adversely influenced the trial process, if not the outcome.^[20]

On January 30, 1951, Gen. Thomas T. Handy, commander-in-chief of the U.S. European Command, commuted the death sentences not yet carried out of the Malmédy defendants to life in prison. Handy alluded to the fact that the killings had taken place in a confused and desperate combat situation to justify the commutation of the Malmédy sentences.^[21]

Handy's decision produced jubilation among Malmédy critics and convicts. Peiper wrote to Everett:

We have received a great victory and next to God it is you [from] whom our blessings flow. In all the long and dark years you have been the beacon flame for the forlorn souls of the Malmédy boys, the voice and the conscience of the good America, and yours is the present success against all the well-known overwhelming odds. May I therefore, Colonel, express the everlasting gratitude of the red-jacket [worn by prisoners sentenced to death] team (retired) as well as of all the families concerned.^[22]

The Malmédy defendants were gradually released from prison courtesy of the Annual Review Board and tensions resulting from the Cold War with the Soviet Union. Jochen Peiper was the last Malmédy defendant to leave prison, receiving his release on December 22, 1956.^[23]

Sacrifices by American Attorneys

Advocating the freeing of the Malmédy defendants had required great courage and personal sacrifice on the part of the American attorneys. Gen. Telford Taylor, chief counsel for war crimes at Nuremberg, publicly castigated Judge Charles Wennerstrum for having made statements "subversive of the interests and politics of the United States." In an open letter to Wennerstrum, Gen. Taylor said that Wennerstrum had made a "deliberate, malicious, and totally unfounded attack on the trials." Taylor's letter to Wennerstrum concluded: "If you in fact held the opinions you are quoted as expressing, you were guilty of grave misconduct in continuing to act in the case at all."^[24]

Edward L. Van Roden told Everett that he also paid a price for his involvement in the Malmédy case. Strong circumstantial evidence indicates that Van Roden had been blacklisted by the judge advocate general's office and denied further active duty in the army reserves, with likely adverse effects on his retirement prospects.^[25]

Willis Everett also made a huge personal and financial sacrifice to free the Malmédy defendants. The physical and emotional stress from the appeal process caused Everett to suffer from declining health and at least one heart attack. Everett estimated his out-of-pocket expenses to be as much as \$50,000, to which must be added the income lost through his neglect of his law practice. The West German consul in Atlanta later presented Everett with a check for \$5,000 as a gesture of appreciation for his exhaustive efforts on behalf of the Malmédy defendants.^[26]

For American attorneys Charles Wennerstrum, Edward L. Van Roden, and Willis Everett, an old-fashioned sense of justice far outweighed the personal sacrifices they faced in criticizing the American-run war-crimes trials. Their actions on an ethical imperative and sense of moral values were greatly appreciated by many Germans. Jochen Peiper wrote to Willis Everett: "You have been America's best ambassador to Germany, setting an example that was respected and recognized far beyond the defendants of the Malmédy case."^[27]

Correction

This article was corrected October 27, 2019 to include Edward L. Roden's denial of having claimed testicular injuries of 137 of 139 German prisoners.

Endnotes

[1] Foust, Hal, "Nazi Trial Judge Rips Injustice," *Chicago Daily Tribune*, Feb. 23, 1948, pp. 1-2.

[2] *Ibid.*

[3] *Ibid.*

[4] <https://codoh.com/library/document/1129/>; E. L. Van Roden, "American Atrocities in Germany," *The Progressive*, February 1949, p. 21f.

[5] *Ibid.*

[6] *Ibid.*

[7] Parker, Danny S., *Hitler's Warrior: The Life and Wars of SS Colonel Jochen Peiper*, Boston, Mass.: Da Capo Press, 2014, p. 148.

[8] Weingartner, James J., *A Peculiar Crusade: Willis M. Everett and the Malmedy Massacre*, New York: New York University Press, 2000, pp. 42-43.

[9] Parker, Danny S., *Hitler's Warrior: The Life and Wars of SS Colonel Jochen Peiper*, Boston, Mass.: Da Capo Press, 2014, p. 171.

[10] *Ibid.*, p. 183.

[11] Weingartner, James J., *A Peculiar Crusade: Willis M. Everett and the Malmedy Massacre*, New York: New York University Press, 2000, pp. 119, 138.

[12] *Ibid.*, pp. 120-122.

[13] *Ibid.*, p. 144.

[14] *Ibid.*, pp. 145, 179.

[15] *Ibid.*, pp. 150, 175, 181-183.

[16] *Ibid.*, p. 174.

[17] Parker, Danny S., *Hitler's Warrior: The Life and Wars of SS Colonel Jochen Peiper*, Boston, Mass.: Da Capo Press, 2014, p. 187.

[18] http://www.loc.gov/rr/frd/Military_Law/pdf/Malmedy_report.pdf.

[19] <https://forum.codoh.com/viewtopic.php?t=12608>.

[20] Parker, Danny S., *Hitler's Warrior: The Life and Wars of SS Colonel Jochen Peiper*, Boston, Mass.: Da Capo Press, 2014, p. 187.

[21] Weingartner, James J., *Crossroads of Death: The Story of the Malmédy Massacre and Trial*, Berkeley, Cal.: University of California Press, 1979, 236.

[22] *Ibid.*, pp. 236-237.

[23] Parker, Danny S., *Hitler's Warrior: The Life and Wars of SS Colonel Jochen Peiper*, Boston, Mass.: Da Capo Press, 2014, pp. 194, 200.

[24] Foust, Hal, "Nazi Trial Judge Rips Injustice," *Chicago Daily Tribune*, Feb. 23, 1948, p. 2.

[25] Weingartner, James J., *A Peculiar Crusade: Willis M. Everett and the Malmédy Massacre*, New York: New York University Press, 2000, p. 209.

[26] *Ibid.*, pp. 199, 220.

[27] *Ibid.*, pp. 222, 227.

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